



ZONING ADMINISTRATOR
NOTICE OF DECISION

Date: January 28, 2014
Applicant: Edward Tamer
Case No.: PCC-12-071
Address: 2015 Birch Road, Suite 2003, Chula Vista, Ca.
A.P.N.: 643-061-02-00
Project Planner: Richard Zumwalt, A.I.C.P., Associate Planner

Notice is hereby given that on January 10, 2014, the Zoning Administrator considered a Conditional Use Permit (PCC-12-071) application filed by Edward Tamer ("Applicant") to allow the addition of live entertainment use to the existing Tacos and Tarros restaurant, which is a full-service restaurant that has been previously approved for the on-site sale and consumption of alcoholic beverages, limited to beer and wine only ("Project"). The Project site is located at the Otay Ranch Town Center at 2015 Birch Road, Suite 2003, Chula Vista, Ca. ("Project Site"). The restaurant is located at the northwest corner of Eastlake Parkway and Kestrel Falls Road, at the easterly entrance to the Otay Ranch Town Center Mall. The Project Site is zoned Planned Community (P-C) Freeway Commercial (FC-1) with a General Plan designation of Freeway Commercial (FWC). The Property is owned by GGP-Otay Ranch, L.P. ("Property Owner"). The proposed land use is more specifically described below:

The application requests approval of live entertainment, including use of a karaoke machine or no more than four un-amplified live entertainers, with the exception that one entertainer may use a microphone or other amplifying device. The live entertainment will be conducted indoors. The restaurant is located in an existing 3,180 square foot suite with a capacity of approximately 50 customers. The restaurant will operate from 8 am to 2 am, seven days a week. Pursuant to the Otay Ranch Freeway Commercial Planned Community District Regulations, restaurants which include dancing or live entertainment in conjunction with service of alcoholic beverages are permitted subject to the approval of a Conditional Use Permit.

The Director of Development Services has reviewed the proposed Project for compliance with the California Environmental Quality Act and has determined that the Project qualifies for a Class 1 categorical exemption pursuant to Section 15301 (Existing Facilities) of the State CEQA Guidelines. Thus, no further environmental review is necessary.

The Zoning Administrator, under the provisions of Section 19.14.030 A of the Chula Vista Municipal Code, has been able to make the following Conditional Use Permit findings as required by CVMC Section 19.14.080:

That the proposed use at this location is necessary or desirable and will contribute to the general well being of the neighborhood or the community.

The proposed full-service restaurant would be located within a major regional commercial center with retail commercial and restaurant uses. The full-service restaurant will also include karaoke, live music, and service of alcoholic beverages, including beer and wine only. The addition of the entertainment use is desirable because it will provide additional entertainment facilities for restaurant customers. Thus, the restaurant would provide desirable dining and entertainment opportunities for area residents at the Otay Ranch Town Center. The proposed restaurant use is consistent with the types of uses that would be found within the commercial center.

That such use will not under the circumstances of the particular case be detrimental to the health, safety or general welfare of persons residing or working in the vicinity or injurious to property or improvements in the vicinity.

The restaurant would be located within a regional commercial center designed for this and other complimentary food, entertainment and retail uses, which provides adequate parking to serve the Project. The shopping center is on the west side of Eastlake Parkway, south of Olympic Parkway, and the Project site is located west of the nearest residential community, the Village of Windingwalk. The restaurant is located in a building with other existing restaurants, including Panda Express and Jersey Mike's Subs, which is approximately 400 feet from the nearest home to the east across Eastlake Parkway. The doors to the restaurant face southerly and not directly at these residences. Conditions of approval are included in the CUP which will ensure that the proposed live entertainment is conducted indoors only, that noise will not be audible from outside the building, and that amplified music is not permitted in the outside patio. The applicant is also required to obtain an amendment to their Type 41 Alcoholic Beverage Control license from the State of California Alcoholic Beverage Control Commission (ABC) in compliance with all applicable state and local regulations. The sales and consumption of alcoholic beverages, including hours of alcohol sales, live entertainment and audible noise, are also regulated by conditions of approval of the ABC license. Thus, the potential for noise and public disturbances generated by the Project would be minimized and would not adversely affect the adjacent residential community.

That the proposed use will comply with the regulations and conditions specified in the code for such use.

Granting of this conditional use permit is conditioned to require the Applicant and Property Owner to fulfill the conditions of approval and to comply with all applicable regulations and standards specified in the Municipal Code for such use. These conditions will be enforced through inspections prior to occupancy of the use and subsequent to operation of the business. Furthermore, the conditions of this permit are approximately in proportion to the nature and extent of the impact created by the project in that the conditions imposed are directly related to, and of a nature and scope related to the size and impact of the project. The project will comply with all regulations and conditions specified in the Zoning Code for uses established under PCC-12-071. The applicant is required to obtain a Type 41 Alcoholic Beverage Control license from the State of California Alcoholic Beverage Control Commission (ABC) for the sales of alcohol, limited to the sale of beer and wine only, in compliance with all applicable state and local regulations.

That the granting of this Conditional Use Permit will not adversely affect the General Plan of the City or the adopted plan of any government agency.

The General Plan designates the site as Freeway Commercial, which permits Retail Commercial land uses such as restaurants. Restaurants serving alcoholic beverages and providing live entertainment, such as live music, are consistent with Freeway Commercial Zone land uses upon approval of a Conditional Use Permit. Thus, the proposed Project is consistent with the General Plan – land use element, and the Otay Ranch Freeway Commercial SPA Plan and PC District Regulations, and will not adversely affect the implementation of the City's General Plan.

BASED ON THE FINDINGS ABOVE, THE ZONING ADMINISTRATOR hereby approves Conditional Use Permit PCC-12-071 as described above, subject to the conditions listed below. The following conditions shall apply to the Project Site, and the Applicant or successor-in-interest shall satisfy these conditions prior to issuance of the first building permit for the project, or at the timeframe specified in the condition:

DEVELOPMENT SERVICES DEPARTMENT

Planning Division:

- 1 The Project Site shall be improved and maintained in accordance with the PCC-12-071 approved plans, which include site plans and floor plans on file in the Planning Division, the conditions contained herein, and the Zoning Ordinance (Title 19). The Property Owner, Applicant or successor-in-interest shall remain in compliance with the conditions as long as the Project relies upon this approval.
2. The applicant shall obtain a modification of the approved Alcoholic Beverage Control (ABC) Type 41 license from the State of California prior to commencement of the live entertainment use. The Applicant shall comply with the applicable State ABC Laws and City Ordinances, and all conditions required by the Chula Vista Police Department pertaining to the sale and consumption of alcoholic beverages and live music performance.
3. The Property Owner, Applicant or authorized representative shall execute this document by making a true copy of this Notice of Decision and signing both this original notice and the copy on the lines provided below, said execution indicating that the Property Owner and the Applicant have each read, understood and agreed to the conditions and land use operation modifications contained herein, and will implement same. Upon execution, the true copy with original signatures shall be returned to the Development Services Department. Failure to return the signed true copy of this document prior to submittal for building permits to the Development Services Department shall indicate the Property Owner's and Applicant's desire that the project, and the corresponding application for building permits and/or a business license, be held in abeyance without approval.

Signature of Property Owner

Date

Signature of Applicant or Authorized Representative

Date

Upon certification by the Development Services Department for occupancy or establishment of use allowed by this Conditional Use Permit, the following conditions shall apply:

DEVELOPMENT SERVICES DEPARTMENT

Planning Division:

4. The hours of operation of the restaurant, including alcoholic beverage sales and consumption, karaoke and live music, shall be seven days a week Sunday through Saturday from 8:00 am to 2:00 am.
5. This Conditional Use Permit is valid for operation of a full-service restaurant serving alcoholic beverages limited to beer and wine only, and live entertainment as further described in the Police Department Conditions of approval below. The live entertainment will be conducted indoors, and no audible sound or amplified music is permitted outside the business. Any new use, modification or expansion of the use, or activities not authorized under this Conditional Use Permit shall be subject to the review and approval of the Zoning Administrator. Because the Project involves a change to the Alcoholic Beverage Control license, review and approval of the State of California Department of Alcoholic Beverage Control is required.
6. The Applicant shall operate the project in compliance with the Performance Standards, CVMC Chapters 19.66 and Performance Standards and Noise Control, Chapter 19.68. The Project cannot generate noise in excess of the applicable exterior noise limits for the receiving land use categories specified in CVMC 19.68.030, Table III. If a formal complaint is received by the Director of Development Services, or if the Director determines that the Applicant is not operating in compliance with the conditions of approval of this permit, then the Director has the discretion to initiate an investigation which may include requesting the applicant to submit plans, technical studies such as acoustical studies, or other information deemed necessary to respond to the complaint or non-compliance issue. After review, the Director has the discretion to maintain the existing Conditional Use Permit, modify the Conditional Use Permit, or revoke the Conditional Use Permit, pursuant to the requirements of CVMC Section 19.14.270.
7. Approval of this Project shall not waive compliance with all sections of Title 19 of the Municipal Code, and all other applicable City Ordinances in effect at the time of the approval of this Conditional Use Permit.
8. If any of the foregoing conditions fail to occur, or if they are, by their terms, to be implemented and maintained over time, if any of such conditions fail to be so implemented and maintained according to their terms, the City shall have the right to

revoke or modify all approvals herein granted, deny, or further condition issuance of all future building permits, deny, revoke, or further condition all certificates of occupancy issued under the authority of approvals herein granted, institute and prosecute litigation to compel their compliance with said conditions or seek damages for their violation. The applicant or a successor in interest gains no vested rights by the City's approval of this Conditional Use Permit.

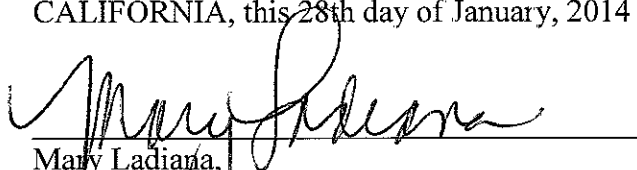
9. The Applicant shall and does hereby agree to indemnify, protect, defend and hold harmless the City, its Zoning Administrator, its officers, employees, agents and representatives, from and against all liabilities, losses, damages, demands, claims and costs, including court costs and attorney's fees (collectively, "liabilities") incurred by the City arising, directly or indirectly, from (a) City's approval and issuance of this Conditional Use Permit, (b) City's approval or issuance of any other permit or action, whether discretionary or non-discretionary, in connection with the use contemplated by the permit, and (c) Applicant's installation and operation of the facility permitted. The Applicant shall acknowledge their agreement to this provision by executing a copy of this Conditional Use Permit, upon approval of the Zoning Administrator. Applicant's compliance with this provision is an express condition of this Conditional Use Permit and this provision shall be binding on any and all of the Applicant's/operator's successors and assigns.
10. This permit shall become void if not used or extended within three years of the effective date thereof in accordance with Section 19.14.260 of the Chula Vista Municipal Code. Failure to comply with the any conditions of approval shall cause this permit to be reviewed by the City for additional conditions or revocation.

POLICE DEPARTMENT:

11. The Applicant shall operate in compliance with the following requirements of the Chula Vista Police Department, including:
 - a. Sales, service and consumption of alcoholic beverages shall be permitted only between the hours of 8:00 AM and 2:00 AM each day of the week.
 - b. Sales, service and consumption of alcoholic beverages shall be permitted in the outdoor patio area only between the hours of 11:00 AM and 10:00 PM, each day of the week.
 - c. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall at all times maintain records which reflect separately the gross sales of food and the gross sales of alcoholic beverages of the licensed business. Said records shall be kept no less frequently than on a quarterly basis and shall be made available to the Police Department on demand.

- d. The sale of alcoholic beverages for consumption off the premises is strictly prohibited.
- e. At all times when alcoholic beverages are sold, served or consumed on the licensed premises, food must be made available upon the request of a customer.
- f. Live entertainment on the premises shall be limited to karaoke or up to four (4) unamplified entertainers; with the exception that one entertainer may use a microphone or other amplifying device for voice projection only.
- g. Sound emanating from the business will not be audible on the outside of the business and there will be no music amplified outside of the business.
- h. There will be no cover or door charges assessed or required of customers.
- i. There shall be no customer dancing allowed on the premises.
- j. No pool or billiard tables may be maintained on the premises.
- k. There shall be no amusement machines or video game devices in the premises at any time.

APPROVED BY ZONING ADMINISTRATOR OF THE CITY OF CHULA VISTA,
CALIFORNIA, this 28th day of January, 2014



Mary Ladiana,
Zoning Administrator